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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/598,935

09/15/2006

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EXAMINER

LEE, JASON T

ART UNIT

PAPER NUMBER

2438

NOTIFICATION DATE

DELIVERY MODE

12/03/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com  
pto@gbpatent.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/598,935	<b>Applicant(s)</b> TERAO, SATOSHI	
	<b>Examiner</b> JASON LEE	<b>Art Unit</b> 2438	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/19/2006, 04/08/2009</u> .                                  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Claims 1-12 are presented for examination.

#### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on 12/19/2006, 04/08/2009 has been considered. The submission is in compliance with the provisions of 37 CFR

1.97. Form PTO-1449 is signed and attached hereto.

#### ***Drawings***

3. The drawings filed on 09/15/2006 are accepted.

#### ***Priority***

4. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Japan on January 17, 2005. It is noted, however, that applicant has not filed a certified copy of the 2005-009676 application as required by 35 U.S.C. 119(b).

Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

#### ***Claim Rejections - 35 USC § 101***

5. Claim 11 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 11 recites "A program intended for downloading an execution program and activating the execution program, said program causing a computer to execute: ..." In the specification of the present application recites "In addition, a program is a Java

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(trademark) program, but the present invention is implementable by using a program other than such Java program.” (see page 61 lines 9-11) and “In addition, the present invention is implementable even by other embedded software.” (see page 61 lines 26-28). Thus, the recited “program” is software per se; therefore, claim 11 is rejected under 35 U.S.C.101 because the claimed invention is directed to non-statutory subject matter.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim1 1-3, 6-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bruno et al (US 2006/0253850 A1), hereinafter Bruno, in view of Wabiszczewicz (US 2004/0252247 A1) hereinafter Wabiszczewicz, further in view of Kori et al (US 2005/0086488 A1) hereinafter Kori.

**As for claims 1, 10, 11, 12:**

Bruno discloses a program execution device which downloads a program and activates the program, **(See Bruno [0012]” provide a technique for predicting download times that may lead to accurate results and that also lends itself to be adapted to the specific characteristics of the services provided by a determined service and/or contents provider.”)** said device comprising:

a download time measurement unit operable to measure a download time of the program; **(See Bruno [0072]” The measurement tool for the download time**

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**provided in the processing unit 12 measures the time needed for downloading a given web page” and [0077] “The results of measurements are stored in the database ) and**

a notification unit operable to predict an activation waiting time based on the history information searched out by said history information search unit and notify a user of the predicted activation waiting time(See Bruno [0114]” **The predictor 30 is comprised of a module adapted for calculating the download time and the efficiency index for a given web page without actually performing any measurement.” And [0115] “The predictor 30 is essentially a software module adapted to receive as its input data such as the network characteristics, the browser type used and the characteristics of the web page while providing as its output the download time and the efficiency index evaluated for that page. ), the activation waiting time being a time from the reception of the activation instruction to an actual activation of the activation instruction. (See Bruno [0144]” **the optimiser module 24 is activated in order to process the data comprised of the measurement results and the type of model chosen....The optimum parameter(s) thus obtained can be subsequently used for predicting, via the module 30, the download times for each page on the same type of network.”)****

Bruno does not explicitly disclose

an activation time measurement unit operable to measure an activation time of the program;

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an activation management unit operable to receive an activation instruction for activating the program;

However, Wabiszczewicz discloses an activation time measurement unit operable to measure an activation time of the program; **(see Wabiszczewicz [0012] “The timer can measure a defined constant time period or a time of operation of the slave decoding device or period of time from a defined range of values”)**

an activation management unit operable to receive an activation instruction for activating the program; **(see Wabiszczewicz [0012] “The controller that controls the operation of the signal processing block in the waiting mode, generates on the screen of the TV receiver a time, which remains until transit to the inactive mode.”)**

It would have been obvious for one of the ordinary skill in the art at the time of the invention was made to modify the invention of Bruno to include an activation time measurement unit and receive an activation instruction to measure an activation time of the program and activate the program as taught by Wabiszczewicz cause they are analogous in the digital broadcasting network and one of ordinary skill in the art would have been motivated to incorporate the teaching of Wabiszczewicz in Bruno of activation time measurement for controlling of the program while downloading the contents.

The combination of Bruno and Wabiszczewicz does not disclose a history information memory unit operable to store, on a program-by-program basis, the measured download time and activation time as a part of history information;

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a history information search unit operable to search out history information of the program for which the activation instruction has been received;

However, Kori discloses a history information memory unit operable to store, on a program-by-program basis, the measured download time and activation time as a part of history information; **(see Kori [0086] “This memory stores, as copy history information, a table TB listing the correlation between content ID and copy permitted count of the information content identified by that ID in this MD recording apparatus as shown in FIG. 7.”)**

a history information search unit operable to search out history information of the program for which the activation instruction has been received; **(see Kori [0107] “When the ISRC of the information content is detected, the controller 40 searches the copy history information managing memory 41 on the basis of this ISRC to determine whether the copy history of this information content is stored in the table TB in the memory 41”)**

It would have been obvious for one of the ordinary skill in the art at the time of the invention was made to modify the modified-invention of Bruno to include memory for storing and searching ability of the information as taught by Kori cause they are analogous in the digital broadcasting network and one of ordinary skill in

the art would have been motivated to incorporate the teaching of Kori and enhance the process of downloading and activation of the program and achieve the user convenience for using information signal can be properly protected and ensured. (see Kori [0018])

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Claim 10 is for a program execution method, claim 11 is for a program, and claim 12 is for a recording medium on which a program is stored. All have the same limitations as claim 1 does.

**As for claim 2:**

The combination of Bruno, Wabiszczewicz and Kori discloses the program execution device according to claim 1, wherein said notification unit is operable to predict the activation waiting time which is a time obtained by adding the download time to the activation time included in the history information searched out by said history information search unit. **(see Wabiszczewicz [0046] “Additionally, the user can be informed, which command or a set of RCU commands must be used in order to perform activation. In step 524 the controller waits for an event. If the event is caused by commands analyzer, which means that the commands analyzer detected a command or a set of activating commands, the controller switches to normal mode in step 525.”)**

Examiner supplies the same rationale for the combination of the references as in claim 1 above.

**As for claim 3:**

The combination of Bruno, Wabiszczewicz and Kori discloses the program execution device according to claim 1, further comprising a holding unit operable to hold the downloaded program, wherein said notification unit is operable to predict, as the activation waiting time, a time obtained by adding the download time to the activation time included in the history information searched out by said history information search



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unit, in the case where the program for which the activation instruction has been received is not held in said holding unit, and is operable to predict, as the activation waiting time, the activation time included in the history information searched out by said history information search unit, in the case where the program for which the activation instruction has been received is held in said holding unit. **(see Wabiszczewicz [0045])**

**In step 514, the controller waits for an event. If an event is caused by the timer, which is equal to the elapse of the time, measured by it, the controller switches into inactive state in step 515. If the event is caused by the commands analyzer, which means that the commands analyzer detected a command or a set of activating commands, the controller switches into normal mode in step 516.”)**

Examiner supplies the same rationale for the combination of the references as in claim 1 above.

**As for claim 6:**

The combination of Bruno, Wabiszczewicz and Kori discloses the program execution device according to claim 1, further comprising a history information update unit operable to update the history information stored in said history information memory unit using (a) the newly measured activation time or (b) the download time and activation time. **(see Kori [0142] “After the completion of copy, the copy history of the recording apparatus is updated as post-processing in the above-mentioned embodiments.”)**

It would have been obvious for one of the ordinary skill in the art at the time of the invention was made to modify the modified-invention of Bruno to include updating the

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history information stored in said history information memory unit as taught by Kori cause they are analogous in the digital broadcasting network and one of ordinary skill in the art would have been motivated to incorporate the teaching of Kori and enhance the process of downloading and activation of the program.

**As for claim 7:**

The combination of Bruno, Wabiszczewicz and Kori discloses the program execution device according to claim 1, wherein said notification unit is operable to notify the user of a program name of the program in addition to the activation waiting time. **(see Bruno [0162]- [0165] “It will be appreciated that the download times (and the efficiency indexes) evaluation can be a useful tool both for [0163] service providers in order to permit them to realise web pages having download times corresponding to the user requests; and [0164] network operators in order to permit them to now download times in a non-intrusive way.... This takes place without interfering in any way with operation of the network N by using an optimised model defined on the basis of a set of sample pages including a relatively small number of sample pages with the pages whose download performance is to be evaluated.”)**

**As for claim 8:**

The combination of Bruno, Wabiszczewicz and Kori discloses the program execution device according to claim 1, wherein said notification unit is operable to notify the activation waiting time using a countdown. **(see Kori [0102] “When copying has been completed, the controller 40 decrements the copy permitted count of the copy history information by one, updating the copy permitted count of the copy history**

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**information stored in the copy history information managing memory 41” and [0108] “If the copy permitted count is 0, the controller 40 stops recording (step S8). If the copy permitted count is 1 or more, the controller 40 continues recording and determines whether the end flag of the copy control information added to the information content is set up or not (step S9). Then, the controller 40 detects the end of the information content with the end flag set up. When copying ends by the key operation by the user, the controller 40 decrements the copy permitted count of the copied information content by one, updating the copy history information”)**

It would have been obvious for one of the ordinary skill in the art at the time of the invention was made to modify the modified-invention of Bruno to include countdown in said history information memory unit as taught by Kori cause they are analogous in the digital broadcasting network and one of ordinary skill in the art would have been motivated to incorporate the teaching of Kori and enhance the process of downloading and activation of the program.

**As for claim 9:**

The combination of Bruno, Wabiszczewicz and Kori discloses the program execution device according to claim 1, wherein said notification unit is operable to predict that the activation waiting time is unknown, in the case where the history information of the program for which the activation instruction has been received cannot be obtained, as a result of the search performed by said history information search unit. **.(see Kori [0132] “If the past history is not found in the table TB in step S6, the controller 40 sets**

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**the content ID namely ISRC in the copy control information attached to that information content and the copy permitted count to the table TB as a preparatory operation for storing a record in the copy history information managing memory 41 as the information content entered in the recording apparatus for the first time.” And [0133] “Then, the controller 40 continues the recording operation to further detect the ISRC of the content ID attached to the information content. When a change of the ISRC has been detected, the controller 40 determines the completion of copying. When copying is ended by the key operation by the user, the controller 40 decrements the copy permitted count for the copied information content by one in the table TB in the copy history information managing memory 41, updating the copy history information (step S10).” And [0135] “ ...When copying two or more pieces of information content consecutively, an ISRC change point is detected as the end point of the preceding information content and the start point of the current information content.”)**

Examiner supplies the same rationale for the combination of the references as in claim 1 above.

Claims 4, 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bruno, Wabiszczewicz and Kori as applied to claims 3 above, further in view of Nakano et al (US 2006/0209689 A1), hereinafter Nakano.

**As for claim 4:**

The combination of Bruno, Wabiszczewicz and Kori discloses the program execution device according to claim 3, does not disclose further comprising a holding unit

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operable to hold the downloaded program, wherein said notification unit is operable to predict, as the activation waiting time, a time obtained by adding the download time to the activation time included in the history information searched out by said history information search unit, in the case where the program for which the activation instruction has been received is not held in said holding unit, and is operable to predict, as the activation waiting time, the activation time included in the history information searched out by said history information search unit, in the case where the program for which the activation instruction has been received is held in said holding unit.

However, Nakano discloses further comprising a holding unit operable to hold the downloaded program, wherein said notification unit is operable to predict, as the activation waiting time, a time obtained by adding the download time to the activation time included in the history information searched out by said history information search unit, in the case where the program for which the activation instruction has been received is not held in said holding unit, and is operable to predict, as the activation waiting time, the activation time included in the history information searched out by said history information search unit, in the case where the program for which the activation instruction has been received is held in said holding unit. **(see Nakano [0011] “a command transmission step of, after authentication data is generated in accordance with shared data shared with a receiving apparatus, transmitting a command for requesting for a response to the receiving apparatus; an authentication step of authenticating the receiving apparatus in accordance with an expected value generated based upon the shared data and the authentication**

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**data generated at the receiving apparatus; a measurement step of measuring a response time taken by the receiving apparatus to respond to the command”)**

It would have been obvious for one of the ordinary skill in the art at the time of the invention was made to modify the modified-invention of Bruno to include authentication time as taught by Nakano cause they are analogous in the digital broadcasting network and one of ordinary skill in the art would have been motivated to incorporate the teaching of Nakano and enhance the process of downloading and activation of the program.

**As for claim 5:**

The combination of Bruno, Wabiszczewicz , Kori and Nakano discloses the program execution device according to claim 4, further comprising an authentication judgment unit operable to judge whether or not the program needs to be authenticated by said authentication unit, wherein said authentication unit is operable to authenticate the program in the case where said authentication unit has judged that the program needs to be authenticated. **(see Nakano [0012]” an authentication control step of controlling authentication of the receiving apparatus in accordance with an expected value generated based upon the shared data and the authentication data generated at the receiving apparatus; a measurement control step of controlling measurement a response time taken by the receiving apparatus to respond to the command; and a judgment control step of controlling judgment whether data transmission to the receiving apparatus is granted or not, in**

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**accordance with an authentication result by the authentication control step and the response time measured by the measurement control step.”)**

It would have been obvious for one of the ordinary skill in the art at the time of the invention was made to modify the modified-invention of Bruno to include authentication Judgment unit as taught by Nakano cause they are analogous in the digital broadcasting network and one of ordinary skill in the art would have been motivated to incorporate the teaching of Nakano and enhance the process of downloading and activation of the program.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASON LEE whose telephone number is (571)270-7477. The examiner can normally be reached on Monday-Friday 9/5/4 (altering Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Taghi T Arani can be reached on (571)272-3787. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JASON LEE/  
Examiner, Art Unit 2438

**/Taghi T. Arani/**

**Supervisory Patent Examiner, Art Unit 2438**